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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D C 20548

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FILE: **B-154522** DATE: **DEC 29 1977**

MATTER OF: **Permanent station allowances -
two-crew submarines**

- DIGEST:
1. Although station allowances authorized under the provisions of 37 U. S. C. 405 (1970) for members without dependents ordinarily are not payable to a member until he reports at his permanent station, the Joint Travel Regulations may be amended to provide that permanent change of station travel terminates when a member reports to the home port of a two-crew nuclear submarine at which time he becomes entitled to allowances applicable to training and rehabilitation duty at the home port of such vessel even though he has not reported on board. At that time station allowances would be payable under current rates if he is not assigned to Government quarters, since he incurs expenses which these allowances were designed to defray. Contrary decisions are modified accordingly.
 2. Although, a member without dependents assigned by permanent change of station orders to a two-crew nuclear powered submarine will be assigned to quarters of the United States on the submarine, when he arrives at the home port of the submarine, in many instances he is required to secure non-Government quarters at which time his travel allowances are terminated. In such cases it is our view that Congress did not intend 37 U. S. C. 407(a)(3) to preclude entitlement to a dislocation allowance when a member is not able to occupy the assigned quarters and incurs expenses which the allowance is intended to defray. Regulations may be

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promulgated authorizing entitlement and 48 Comp. Gen. 450 (1969) is modified accordingly.

3. Regulations may be changed to provide that basic allowance for quarters authorized under 37 U. S. C. 403 (1970) may be paid to members in pay grades E-4 (with less than 4 years' service) and below, prior to reporting on board the two-crew nuclear submarine when attached thereto incident to a permanent change of station, when they arrive at the submarine's home port and are not assigned Government quarters and are not entitled to a per diem allowance by virtue of a proposed change in regulations terminating permanent change of station travel at the time the member reports to the home port of these vessels. Such allowance would then be based upon the member's entitlements in a training and rehabilitation status.

This action is in response to letter dated March 8, 1977, from the Assistant Secretary of the Navy (Manpower and Reserve Affairs) requesting a decision on various questions concerning the allowance entitlements of Navy members assigned to two-crew nuclear submarines. The questions have been assigned PDTATAC Control Number 77-8, by the Per Diem, Travel and Transportation Allowance Committee and Control Number SS-N-1262, by the Department of Defense Military Pay and Allowance Committee.

The questions concern entitlement of members assigned to two-crew nuclear submarines to housing and cost-of-living allowances, temporary lodging allowance, and dislocation allowance, during the period between their arrival at the home port of the submarine and the date they report aboard the submarine itself. A question is also raised concerning the entitlement to basic allowance for quarters (BAQ) for members in pay grades E-4 (with less than 4 years' service) and below. The primary issue in the case involves establishing an appropriate status for members who are assigned to two-crew nuclear submarines (the submarine being defined as their

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permanent duty station) between the date they report to the home port of the submarine, where a large part of their duties are also to be performed, and the date they report to the submarine. A substantial period is often involved since these submarines are normally at sea and unavailable.

The submission points out that this Office has held that a member assigned to a ship is not considered to have reported to his permanent station until he actually reports on board the vessel. Under that rule a member assigned to a two-crew nuclear submarine is considered to be in a travel or temporary duty status incident to the change of station until he actually reports on board the submarine. See 48 Comp. Gen. 480 (1969); 47 Id. 527 (1968); 46 Id. 161 (1966); and 45 Id. 600 (1966).

During this period of temporary duty a member with or without dependents is entitled to per diem allowances until he moves into permanent quarters. If he secures permanent quarters his per diem allowances are terminated. See Volume I, Joint Travel Regulations (1 JTR), paragraph M4155, case 13. However, this does not change the character of his duty and he is still considered to be in a temporary duty or travel status. As a result, a member is not entitled to station allowances (housing, cost-of-living and temporary lodging allowances) for himself, since he has not reported to his permanent station. Members in pay grades E-4 (with less than 4 years' service) and below are not entitled to BAQ during the period of temporary duty, since they are still considered to be in a travel status.

Further, a member without dependents who is assigned to a ship is provided with Government quarters on the vessel and, therefore, is not entitled to the dislocation allowance authorized under 37 U. S. C. 407 (1970). See 48 Comp. Gen. 480, supra.

A problem has arisen in these cases because, due to operational requirements, two-crew nuclear submarines seldom enter their home ports. The respective crews change over at a port other than the home port of the submarine every 90 days. The off-ship crew is airlifted from the home port to the port where the exchange occurs, and the on-ship crew which is relieved is airlifted back to the home port to commence its period of training and rehabilitation at that place. Since the submarine is inaccessible most of the time, a member assigned to a two-crew nuclear submarine is issued permanent

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change of station orders to report to the home port of the submarine, pending his reporting aboard the submarine, and his orders indicate to which of the two autonomous commands or crews he is assigned. On arriving at the home port the member is assigned to duty with the crew to which he was assigned by his orders if it is the off-ship crew undergoing training and rehabilitation, although for travel purposes he is still on temporary duty incident to his permanent change of station having not reported aboard the submarine. If the crew to which he is not assigned by his orders is at the home port, he is assigned to temporary duty with it until his own crew returns to the home port for training and rehabilitation, at which time he joins that crew in a temporary duty status since he has not yet reported to the ship itself. Depending on the crew to which the member is assigned, the period of temporary duty can be as long as 180 days, since the crews rotate every 90 days.

It is noted in the submission that as a result of these situations inequities exist for members assigned to two-crew nuclear submarines. Assignment to one of these submarines places a member in a unique status. The quarters on the submarine itself are only available to a crew member 50 percent of the time. The remaining 50 percent of the time a member is in travel status incident to the crew change or ashore performing training and rehabilitation duty primarily at the home port of the submarine in circumstances where Government quarters may not be available and the member must secure non-Government quarters. Also during this period the member may take leave. It is also noted that while the member is ashore and not on leave the duties he performs are not unlike those performed on the submarines.

It is suggested that a resolution of the matters in question can be achieved within the current definition of "permanent station", provided it is determined by our Office that contemplated changes in the regulations are allowable, within the provisions of the law. However, it is said that a more proper solution of this long-standing issue would be to modify the definition of "permanent station" as it pertains specifically to two-crew nuclear submarine duty. If such a change were made, decisions on each individual allowance would not appear necessary. Further, Navy members assigned to duty aboard two-crew nuclear submarines would be given equitable entitlements.

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Therefore, it is requested that consideration be given to modifying the previous decisions which have held that the vessel and the vessel only is the permanent duty station of members assigned to duty aboard two-crew nuclear submarines and that a decision be rendered as to whether the definition of permanent station contained in Appendix J, 1 JTR, may be amended under the authority granted to the Secretaries concerned by 37 U.S.C. 411(d) (1970).

An amendment to that regulation is suggested which would terminate the member's permanent change of station travel status at the time he reports to the commanding officer of the submarine who is at the home port at the time the member arrives. This would be the commander of the off-ship crew and would not necessarily be the commander of the crew to which the member will be assigned. The proposal does not appear to modify the definition of permanent station except to the extent that the member's reporting to the home port would be considered as a constructive reporting to his permanent duty station. At the time of reporting to the home port the member would terminate his permanent change of station travel status and enter the duty status applicable to all crew members undergoing training and rehabilitation at the home port.

As noted paragraph M4156, case 12, 1 JTR, precludes the payment of travel allowances once a member occupies permanent type quarters at the home port of the vessel to which assigned. While not specifically modifying the definition of permanent station, this regulation has had the effect of terminating a member's travel status and the allowances resulting therefrom prior to his actual date of reporting at his permanent station, the vessel. Thus, while this regulation was not promulgated with a view toward the unique situations presented by the assignment of a member to a two-crew nuclear powered submarine, we believe the rationale behind its issuance to be pertinent to the instant case.

Obviously, this regulation was issued to preclude the payment of per diem allowance authorized for travel or temporary duty when the expenses of such travel were not being incurred. The effect of this regulation was to expand a member's permanent station to include the place where a member actually establishes a permanent type residence, without actually changing the definition contained in Appendix J.

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Similarly, we believe an amendment to the JTRs terminating a member's travel status incident to permanent change of station travel when he arrives at the home port of the two-crew nuclear submarine would be appropriate in view of the particular situation involved. Our view in this regard is based on the fact that the member's normal duty in this assignment includes a substantial amount of time in a training and rehabilitation status at the vessel's home port.

As a technical matter, a member in the situations discussed in the submission has not arrived at his permanent station until he reports on board the submarine. However, if his travel status has been terminated and he commences his normal duties--training and rehabilitation at the home port of the submarine--it is our view that he should be entitled to the same allowances during this period that he would receive if he had already reported on board the submarine, his permanent station, and then performed the duty at the home port.

In past decisions we have held that members assigned to a two-crew nuclear submarine while ashore for periods in excess of 15 days for temporary additional duty for training and rehabilitation are entitled to quarters allowance and housing and cost-of-living allowances when not assigned to Government quarters and furnished Government messing facilities. See 44 Comp. Gen. 106 (1964); 47 Comp. Gen. 527 (1968); and 55 Comp. Gen. 535 (1974). That conclusion was reached because, although technically, members attached to two-crew submarines are assigned quarters on the submarine, it was our view that Congress intended that members either be furnished quarters which they are able to occupy or be paid an allowance for quarters. We also concluded that since members ashore in excess of 15 days for training and rehabilitation duty were not considered to be in a "sea duty" status, the limitation in 37 U.S.C. 403(c) on the payment of BAQ to a member in this status was no longer applicable. Further, we concluded that the housing and cost-of-living allowances could also be paid since these members were actually experiencing the costs which the allowances were intended to defray.

With regard to temporary lodging allowances authorized under 37 U.S.C. 405 (1970), we have concluded that since the vessel is the permanent station, a member is still in a travel or temporary duty status until he reports aboard the vessel, and therefore is not

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entitled to this allowance for himself, since the entitlement to such allowances exists only when a member has reported to his permanent station. This is the case even though payment may be made to him on account of his dependents at the home port when they occupy hotel or hotel-like accommodations and are required to use restaurants. 48 Comp. Gen. 716 (1969).

The logic of such a rule seems clear, since the member in such cases is entitled to a per diem allowance for himself while in a travel status prior to reporting aboard the submarine. However, if a regulation were promulgated which would have the effect of terminating his travel status, and the member was required to occupy hotel and hotel-like accommodations subsequently without entitlement to a per diem allowance authorized for his travel duty, it would follow that he should be entitled to a temporary lodging allowance for himself, since he would be incurring the additional expenses which such allowance was intended to defray.

Furthermore, if a member is not entitled to a per diem allowance because his travel status is terminated and is entitled to BAQ and subsistence at the home port, it would appear that he should be entitled to housing and cost-of-living allowances authorized under 37 U. S. C. 405 (1970) for the same reasons stated in 53 Comp. Gen. 535, supra.

Likewise, the limitation of 37 U. S. C. 403(f) which precludes entitlement to a BAQ for members in pay grade E-4 (with less than 4 years' service) or below when they are in a travel status would no longer be applicable if a regulation were promulgated terminating permanent change of station travel when a member arrives at the home port in connection with his assignment to a two-crew nuclear powered submarine.

Accordingly, if the JTRs are amended so that a member's travel status resulting from a permanent change of station incident to assignment to a two-crew nuclear submarine, is terminated upon his reporting to the home port of the submarine, thereby precluding the payment of per diem allowances, further amendment to the regulations providing entitlement to station allowances authorized by Part G, Chapter 4, 1 JTR, would be appropriate for members incurring the expenses for which these allowances were intended to defray, is authorized.

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The Department of Defense Military Pay and Allowances Entitlements Manual may also be amended to provide for entitlement to a BAQ for members in pay grades E-4 (with less than 4 years' service) and below, assuming appropriate regulations terminating travel status in the described circumstances are promulgated.

The views expressed in 48 Comp. Gen. 716, supra, and similar cases involving entitlement to station allowances for members assigned to two-crew nuclear powered submarines upon reporting to the home port of the submarine will no longer be followed if a member's change of station travel status is terminated so that he is no longer entitled to a per diem allowance in connection therewith.

Subsection 407(a)(3) of title 37, United States Code, prohibits the payment of a dislocation allowance to a member without dependents who is transferred to a permanent station where he is assigned to quarters of the United States. A member assigned to a two-crew nuclear powered submarine is assigned to quarters of the United States on the submarine.

As we noted in 47 Comp. Gen. 577, a member without dependents is ordinarily precluded from receiving BAQ when he is assigned to quarters of the United States or is on sea duty; however, we concluded that when the member is not on sea duty, although assigned to quarters of the United States on the vessel, it appeared that such assignment must be to quarters he is able to occupy in order to preclude the payment of BAQ. Similarly, while 37 U. S. C. 407(a)(3) authorizes payment of a dislocation allowance to a member when he is not assigned to quarters of the United States at his permanent station, it would seem that the Congress did not intend to preclude the payment of the allowance when a member is not able to occupy the assigned quarters, and is in fact incurring the expense of moving into non-Government quarters, since he has no alternative. Accordingly, the regulations may be amended to authorize payment of a dislocation allowance in these limited circumstances, and 48 Comp. Gen. 490 is modified accordingly.

It is our view that an amendment to the definition of "permanent station" set forth in Appendix J, 1 JTR, while possible, may not be appropriate. The apparent reason for suggesting the amendment relates only to the period of duty performed prior to reporting on board the submarine. If the definition of "permanent station" as it

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applies to members assigned to two-crew nuclear powered submarines is changed, then it would either involve a change requiring the home port to be considered the permanent station for all purposes not just for reporting purposes prior to actually reporting on board the submarine or a change under which the vessel and the home port would both be considered the permanent station of members of crews of these vessels. The amendment suggested by the Navy in the submission does not accomplish either of these changes but rather creates a constructive reporting at the home port as constituting reporting at the permanent station, the submarine. We believe that any amendments to accomplish the purpose suggested, should be made in Chapters 4 and 9, rather than in Appendix J, 1 JTR, to authorize entitlement to the various allowances.

If it is determined that an actual amendment to the definition of "permanent station" is desired, we believe the matter should be resubmitted to this Office for consideration after an in-depth study is conducted of the effects of changing the definition of "permanent duty station" as it relates to duty on two-crew nuclear powered submarines.

As we stated earlier, we have no objection to amendments to the pertinent chapters of 1 JTR authorizing station allowance and dislocation allowance and amendments to the Military Pay and Allowances Entitlements Manual with regard to BAQ in the described circumstances based upon a determination that members of crews of these vessels complete permanent change of station travel upon arrival at the home port and enter a training and rehabilitation status until they actually report aboard the submarine.

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Comptroller General
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